IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

MONDAY, THE 16TH JULY 2007 / 25TH ASHADHA 1929

Bail Appl..No. 3546 of 2007(M)

CRIME NO.186/06 OF THE MALAYINKEEZHU POLICE STATION

PETITIONER/ACCUSED

MANOJ MANI M.A., AGED 28 YEARS,
S/O MANIKANTAN, THEKKPARUTHIPARAL HOUSE,
N.4, PACHALLOOR, THIRUVALLAM, TRIVANDRUM DISTRICT,
PIN-695527, NOW RESIDING AT ETTENNIYAL VEEDU,
EDAGRAMAM, KARUMOM P.O., TRIVANDRUM, PIN-695502.

BY ADV. SRI.C.S.MANU

RESPONDENTS: COMPLAINANT

STATE OF KERALA, REPRESENTED BY THE
S.I. OF POLICE, MALAYINKEEZHU, POLICE STATION,
TRIVANDRUM.

BY PUBLIC PROSECUTOR SRI.S.U. NAZAR

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 16/07/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

B.A. NO. 3546 OF 2007

Dated this the 16th day of July, 2007

ORDER

Application for anticipatory bail. The petitioner faces allegations, inter alia, under Sec.308, 452 and 324 of the IPC. Investigation is now complete. Final report has already been filed. The petitioner apprehends arrest now in execution of a non-bailable warrant of arrest issued by the learned Magistrate. The learned counsel for the petitioner submits that the petitioner is absolutely innocent. The allegation under Sec.308 of the IPC has been unnecessarily included only to ensure that the petitioner is detained in custody for as long a period as possible. In fact, cognizance was taken initially for offences triable by a Magistrate. But it has now been allegedly realised that the final report makes an allegation under Sec.308 of the IPC also. The case numbered as C.C. now has been re-numbered as C.P.

2. The learned counsel for the petitioner submits that the injury suffered is simple. The allegation under Sec.308 of the IPC has been included with the transparent purpose of vexation and harassment. Only to ensure that the petitioner will not get bail from the learned Magistrate, such an allegation has been included. In these circumstances, it is submitted that relying on the decision in **Bharat Chaudhary and another v. State of Bihar –** AIR 2003 SC 4662 anticipatory bail may be granted to the petitioner.

3. The learned Public Prosecutor does not seriously oppose the application. The learned Public Prosecutor submits that the investigation is now complete. Subject to appropriate conditions the petitioner can be granted anticipatory bail. Custodial interrogation is not necessary now.

4. I am satisfied, in these circumstances, that directions under Sec.438 of the Cr.P.C. can be issued in favour of the petitioner. Notwithstanding the fact that the final report has been filed, the inclusion of the offence under Sec.308 of the IPC

subsequently does persuade me to take that view. Appropriate directions can, of course, be issued in the interests of a fair and exhaustive investigation.

5. In the result, this petition is allowed. Following directions are issued under Sec.438 of the Cr.P.C:

(i) The petitioner shall appear before the learned Magistrate having jurisdiction at 11 a.m. on 23/7/07. He shall be released on regular bail on his executing a bond for Rs.50,000/- with two solvent sureties each for the like sum to the satisfaction of the learned Magistrate.

(ii) The petitioner shall make himself available for interrogation before the Investigating Officer between 10 a.m. and 3 p.m. on 24/7/07 and thereafter as and when directed by the Investigating Officer in writing to do so.

(iii) If the petitioner does not appear before the learned Magistrate as directed in clause (i), directions issued above shall thereafter stand revoked and the police shall be at liberty to arrest the petitioner and deal with him in accordance with law as

if those directions were not issued at all;

(iv) If the petitioner were arrested prior to his surrender on 23/7/07 as directed in clause (i) above, he shall be released on his executing a bond for Rs.25,000/- without any sureties undertaking to appear before the learned Magistrate on 23/7/07.

Sd/-

(R. BASANT, JUDGE)

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P.S. to Judge